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13 Attorneys for Trustee  
14 Angelique L.M. Clark

15 UNITED STATES BANKRUPTCY COURT

16 DISTRICT OF NEVADA

17 \* \* \*

18 In re:

Case No. BK-08-51131-GWZ  
Chapter 7

19 CETUS MORTGAGE, LTD.

20 Debtor.

21 \_\_\_\_\_/  
22 ANGELIQUE L.M. CLARK,  
23 TRUSTEE,

Adv. No. \_\_\_\_\_

24 Plaintiff,

25 vs.

26 **COMPLAINT TO AVOID TRANSFERS**  
27 **PURSUANT TO 11 USC §§ 544,**  
28 **548(a) AND/OR NRS § 112.180**

29 STEVEN L. MOSS, DAVID E. HALD,  
30 C. GARO GHOLDIAN, JONATHAN  
31 S. GARY-SAGE and JOHN SCOTT,  
32 in their capacities as the Trustees of  
33 the Urologic Surgeons Ltd. Profit  
34 Sharing Plan; Trustees of Urologic  
35 Surgeons Ltd. Profit Sharing Plan  
36 and Trust fbo Steven Moss; and

1 Trustees of the Urologic Surgeons,  
2 Ltd. Profit Sharing Plan and Trust  
3 fbo John Scott,

4 Defendants.  
5 \_\_\_\_\_/

6 Plaintiff Angelique L.M. Clark, Trustee, by and through her counsel Woodburn  
7 and Wedge complains and alleges as follows:

8 I

9 **PARTIES, JURISDICTION AND VENUE**

10 1. This case presents claims that arise under Title 11 USC and, therefore,  
11 this Court has jurisdiction over this matter pursuant to the provisions of 28 USC §  
12 1334(b).

13 2. This matter presents issues relating to the determination, avoidance and  
14 recovery of fraudulent conveyances and, therefore, the claims alleged herein are core  
15 proceedings under the provisions of 28 USC § 157(b)(2)(H).

16 3. This Court is a proper venue for this case under the provisions of 28 USC  
17 § 1409(a).

18 4. Plaintiff Angelique L.M. Clark ("Clark") is the duly appointed trustee of the  
19 Chapter 7 bankruptcy estate of Cetus Mortgage, Ltd. ("Cetus") pending before this Court  
20 as Case No. BK-08-51131 ("Bankruptcy").

21 5. The Defendant conducted business with Cetus within Washoe County,  
22 Nevada, and the claims asserted herein relate to such business activities.

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- A. Forged signatures on property conveyances;
- B. Altered property descriptions in deeds of trust without proper authorization;
- C. Failed to properly account for investors' funds; and

1  
2 D. Committed other violations of law.

3 11. Cetus allowed its Nevada mortgage company license to expire without  
4 renewal on June 30, 2008.

5 12. Cetus filed a voluntary petition for relief under Chapter 11 of the United  
6 States Bankruptcy Code with this Court on July 9, 2008, commencing the above captioned  
7 Bankruptcy.  
8

9 13. On July 17, 2008, Clark was appointed Trustee of Cetus' bankruptcy estate  
10 pursuant to the provisions of 11 USC § 1104. Cetus' Chapter 11 case was converted to  
11 Chapter 7 proceedings on August 19, 2008, and Clark was subsequently appointed  
12 Trustee of Cetus' Chapter 7 estate.  
13

14 14. Pursuant to 11 USC § 704, one of the duties of bankruptcy trustees is to  
15 investigate the financial affairs of the debtor. Clark has investigated, and continues to  
16 investigate, Cetus' financial affairs. To date, Clark's investigation has revealed, among  
17 other things, that:

18 A. Contrary to Nevada State law and regulations governing mortgage  
19 companies, Cetus commingled investors' funds;

20 B. Cetus used monies invested by lenders for purposes other than for which  
21 they were invested; and

22 C. Cetus, in some instances, failed to repay investors when loans they funded  
23 were paid in full by the borrowers and, instead, used the repayment funds to  
24 pay other investor claims or fund its operations. In turn, Cetus used other  
25 investors' investment funds to continue to pay interest to the prior investors  
26 to make it appear borrowers were still making interest payments on the  
27 loans.  
28

15. Based upon her investigations to date, Clark alleges that Cetus was  
engaged in a phony investment scheme in which:

- 1 A. Monies paid by later investors were, at times, used to pay returns on
- 2 investments to earlier investors while no actual return had been received on
- 3 behalf of the earlier investors;
- 4 B. Monies that properly belonged to certain investors were used to continue to
- 5 pay interest on investments made by other investors in an attempt to cover
- 6 up the fact the other investors' loans had gone into default; and
- 7 C. Monies invested by later investors were used to fund prior loans from which
- 8 Cetus had improperly diverted funds to cover up the fact loan funds had
- 9 been misused.

10 16. Clark alleges that Cetus engaged in the phony investment activities

11 referenced in Paragraph 14, above, for the purpose of causing investors, old and new, to

12 continue to invest with Cetus, i.e. Cetus was engaged in a Ponzi scheme.

### 13 III

#### 14 FIRST CLAIM FOR RELIEF

#### 15 (Fraudulent Transfers—11 USC §548(a)(1)(A))

16 17. Clark repeats each and every allegation contained in Paragraphs 1 through

17 16, above, and incorporates the same herein as if set forth in their entirety.

18 18. Based upon information available from Cetus' books and records, Clark is

19 informed and believes, and on that basis alleges, that from and after July 10, 2006, and up

20 until Cetus filed for bankruptcy relief on July 9, 2008, it made payments to the Defendant

21 and/or gave the Defendant interests in promissory notes, and that the aggregate value of

22 the payments and the interests in the notes exceeded the amounts the Defendant had

23 invested with Cetus ("Excess Transfers").

24 19. The Excess Transfers referenced in Paragraph 18, above, were made on or

25 within two (2) years before Cetus filed its Chapter 11 petition in this matter.

26 20. Cetus made the Excess Transfers listed in Paragraph 18, above, with actual

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28

1 intent to hinder, delay, or defraud persons or entities to which Cetus was, or would  
2 become, indebted.

3  
4 21. The Excess Transfers referenced in Paragraph 18, above, constitute  
5 fraudulent transfers pursuant to 11 USC §548(a)(1)(A) that may be avoided by this Court.

6 Wherefore, Clark prays for relief as hereinafter set forth.

7  
8 **IV**

9 **SECOND CLAIM FOR RELIEF**  
**(Fraudulent Transfers—11 USC §548(a)(1)(B))**

10 22. Clark repeats each and every allegation contained in Paragraphs 1 through  
11 21, above, and incorporates the same herein as if set forth in their entirety.

12 23. At the time Cetus made the Excess Transfers referenced in Paragraph 18,  
13 above, Cetus received less than equivalent value in exchange for the payment.

14 24. At the time Cetus made the Excess Transfers referenced in Paragraph 18,  
15 above, Cetus was either insolvent or rendered insolvent as a result of the payments.

16 25. The Excess Transfers referenced in Paragraph 18, above, constitute  
17 fraudulent transfers pursuant to 11 USC §548(a)(1)(B) that may be avoided by this Court.

18  
19 Wherefore, Clark prays for relief as hereinafter set forth.

20  
21 **V**

22 **THIRD CLAIM FOR RELIEF**  
**(Fraudulent Transfers—NRS §112.180(1)(a))**

23 26. Clark repeats each and every allegation contained in Paragraphs 1 through  
24 25, above, and incorporates the same herein as if set forth in their entirety.

25 27. Pursuant to 11 USC §544, Clark has the rights and powers of a lien creditor  
26  
27  
28

1 and as a successor to certain creditors and purchasers which provides her with standing  
2 to bring any fraudulent transfer actions that may exist under non-bankruptcy law.

3  
4 28. Based upon information available from Cetus' books and records, Clark is  
5 informed and believes, and on that basis alleges, that from and after July 10, 2004, and up  
6 until Cetus filed for bankruptcy relief on July 9, 2008, it made payments to the Defendant  
7 and/or gave the Defendant interests in promissory notes, and that the aggregate value of  
8 the payments and the interests in the notes exceeded the amounts the Defendant had  
9 invested with Cetus ("Excess Transfers").

10  
11 29. Cetus made the Excess Transfers listed in Paragraph 28, above, with actual  
12 intent to hinder, delay, or defraud its creditors.

13 30. The Excess Transfers referenced in Paragraph 28, above, constitute  
14 fraudulent transfers pursuant to NRS §112.180(1)(a) that may be avoided by this Court.

15 Wherefore, Clark prays for relief as follows:

16 A. For an order voiding the Excess Transfers referenced in Paragraph 18 as  
17 fraudulent transfers under the provisions of 11 USC § 548(a)(1)(A);

18 B. For an order voiding the Excess Transfers referenced in Paragraph 18 as  
19 fraudulent transfers under the provisions of 11 USC § 548(a)(1)(B);

20 C. For an order voiding the Excess Transfers referenced in Paragraph 28 as  
21 fraudulent transfers under the provisions of NRS §112.180(1)(a);

22 D. For judgment against the Defendant, or any immediate or mediate  
23 transferee of any preferential payment or fraudulent transfer, in an amount to be proven at  
24 the trial in this matter, as provided in 11 USC §550;

25 E. For an award of costs incurred in connection with the prosecution of this  
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27  
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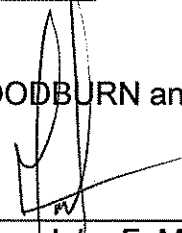
1 matter;

2 F. For an award of attorneys' fees incurred in connection with the prosecution  
3 of this matter; and  
4

5 G. For such other and further relief as to this Court is necessary or appropriate  
6 under the circumstances.

7 DATED this 6<sup>th</sup> day of July, 2010.

8  
9 WOODBURN and WEDGE

10  
11 By   
12 John F. Murtha, Esq.  
13 Attorneys for Trustee  
14 Angelique L.M. Clark  
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